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In re Application of
KUBSIK, Helmut J. *et al*
U.S. Application No.: 08/765,584
PCT No.: PCT/EP95/01985
Int. Filing Date: 26 May 1995
Priority Date: 20 June 1994
Attorney's Docket No.: PORT012
For: DETECTOR FOR MEASURING DEVICE

:
:
: DECISION ON
:
: PETITION
:
: UNDER 37 CFR 1.137(b)
:

This decision is in response to applicants' "Renewed Petition Under 37 CFR 1.137,"
filed 15 October 1999.

BACKGROUND

On 24 September, a decision dismissing applicants' petition was mailed because
applicants failed to meet the requirements of 37 CFR 1.137(a) or (b).

On 15 October 1999, applicants filed the instant renewed petition requesting
reconsideration and to convert to a petition to revive under 37 CFR 1.137(b) only.

DISCUSSION

As previously stated, a petition requesting that an application be revived on the grounds
of unintentional delay pursuant to 37 CFR 1.137(b) must be accompanied by: (1) a proper
reply; (2) the requisite petition fee; (3) a statement that the entire delay in filing the required
reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR
1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37
CFR 1.20(d)) pursuant to 37 CFR 1.137(c).

In this case, the required reply is to provide a proper English translation. The

translation submitted on 16 May 1997 was deemed defective because headings and sections were added and the dependencies of several claims, *i.e.*, 4-9 and 11-13 have been added. Here, applicants have provided an acceptable English translation of the international application as filed. Moreover, a check of \$130.00 for a processing fee pursuant to 37 CFR 1.492(f) has been provided. Thus, item (1) of 37 CFR 1.137(b) is now satisfied.

Applicants have submitted a check in the amount of \$605.00 for the petition fee satisfying item (2) of 37 CFR 1.137(b).

Regarding item (3), applicants state that "that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" as required. This statement complies with item (3).

Finally, regarding item (4), 37 CFR 1.137(c) states, in part:

Any terminal disclaimer pursuant to this paragraph must also apply to any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought.

Applicants included the \$55.00 terminal disclaimer pursuant to 37 CFR 120(d). However, the terminal disclaimer submitted with the instant petition limits its application to the above-identified application only. It does not apply to an application containing a specific reference under 35 U.S.C. 120, 121, or 365(c), and is therefore unacceptable. Consequently, applicants have not yet satisfied item (4) of 37 CFR 1.137(b).

A copy of a standard Terminal Disclaimer Form (PTO/SB/62) is attached with this decision. Most standard forms are located at the United States Patent and Trademark Office ("PTO") website at www.uspto.gov/web/forms. These forms contain language acceptable to the PTO.

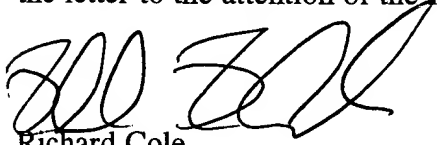
CONCLUSION

For the reasons above, applicants' petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

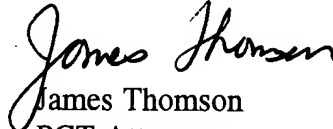
The application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." A proper response must include a terminal disclaimer in accordance with 37 CFR 1.137(c). Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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